



08 MAR 2006
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In re Application of
Brunner et al.
Application No.: 10/531,658
PCT No.: PCT/EP02/06077
Int. Filing Date: 04 June 2002
Priority Date: 21 June 2001
Attorney Docket No.: 460868.00020
For: Method And Device For Obtaining Fatty
Acid Esters From Native Oils And Fats By
Means Of The Enzymatic Separation Thereof

DECISION

This is in response to the "Petition For Filing Date" filed on 15 April 2005, a copy of which was filed on 13 July 2005.

BACKGROUND

This international application was filed on 04 June 2002 and claimed an earliest priority date of 21 June 2001. The United States was designated. The International Bureau transmitted a copy of the published international application to the USPTO on 06 February 2003. Consequently, the thirty month period for payment of the basic national fee in the United States expired as of midnight on 21 December 2003.

DISCUSSION

Petitioner requests

that the above application be awarded a filing date of December 18, 2003, and be provided with an official U.S. patent application serial number. Applicant notes that the enclosed papers are true and correct copies of a U.S. national phase patent application filed by the undersigned on December 18, 2003, by Express Mail. Also enclosed are true and correct copies of the Shipment History and Express Mail label confirming U.S. Mail receipt of the filing on that date.

This petition is properly treated under 37 CFR 1.10(e), which provides that

(e) Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Director to consider such correspondence filed in the Office on the USPS deposit date, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";
- (3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the

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"Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Director, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

The instant petition complies with 37 CFR 1.10(e)(1).

The instant petition complies with 37 CFR 1.10(e)(2) because "Express Mail" mailing label no. EV16187769US was placed on the Transmittal Letter.

With regard to 37 CFR 1.10(e)(3), the petition is accompanied by copies of the correspondence in question, and the copy of the Transmittal Letter and the copy of the return postcard receipt both show "Express Mail" mailing label no. EV16187769US. Petitioner has also provided a copy of "Express Mail" mailing label no. EV16187769US, which does not show a "date-in," and a copy of a USPS receipt dated "12/18/2003" showing that "Express Mail" parcel EV16187769US was deposited with the USPS, and postage paid for it, on that date. It is also noted that the USPS "Track & Confirm" Web site indicates that this Express Mail parcel was accepted on "December 18, 2003, 5:46 pm, MILWAUKEE, WI 53203." The totality of this evidence satisfies the requirements of 37 CFR 1.10(e)(3).


The instant petition also complies with 37 CFR 1.10(e)(4).

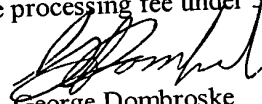
As all of the requirements of 37 CFR 1.10(e) have been satisfied, the Transmittal Letter, English translation of the international application and drawings, Form PCT/IB/308, translation of Form PCT/RO/101, Power of Attorney, Information Disclosure Statement and Form 1449, prior art references, and preliminary amendment filed on 15 April 2005 are regarded as copies of the corresponding papers originally filed via Express Mail on 18 December 2003. It is noted that a declaration of the inventors was filed under PCT Rule 4.17(iv). However, that declaration is defective because it appears to have been altered after being signed, by the addition of untranslated German language text ("Kopie der Seite 7 mit der Unterschrift von Herr Dirk Kilian"). It is also noted that the English translation of the international application is defective because the title has not been translated, and because German text ("Dr. Frische GmbH") appears at the top of the page. The translation is also improper because the footnotes appearing on pages 10 and 22 do not appear to represent the translation of matter present in the German language international application.

CONCLUSION

The petition is GRANTED.

This application is being forwarded to the National Stage Processing Branch for further processing, including the preparation and mailing of a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring the filing of an oath or declaration compliant with 37 CFR 1.497(a) and (b), the filing of an acceptable English translation of the international application, and the payment of the surcharge under 37 CFR 1.492(h) and the processing fee under 37 CFR 1.492(i).


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